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Subpart A—Proceedings Under Section 5 of the Walsh-Healey Public Contracts Act

SOURCE: 11 FR 14493, Dec. 18, 1946, unless otherwise noted. Redesignated at 24 FR 10952, Dec. 30, 1959.

§50–203.1 Reports of breach or violation.

(a) Any employer, employee, labor or trade organization or other interested person or organization may report a breach or violation, or apparent breach or violation of the Walsh-Healey Public Contracts Act of June 30, 1936 (49 Stat. 2036, as amended; 41 U.S.C. 35–45), or of any of the rules or regulations prescribed thereunder.

(b) A report of breach or violation may be reported to the nearest office of the Wage and Hour Division, Employment Standards Administration or with the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(c) [Reserved]

(d) In the event that the Wage and Hour Division is notified of a breach or violation which also involves safety and health standards, such Director shall notify the appropriate Regional Director of the Bureau of Labor Standards who shall with respect to the safety and health violation take action commensurate with his responsibilities pertaining to safety and health standards.

(e) The report should contain the following:

(1) The full name and address of the person or organization reporting the breach or violation.

(2) The full name and address of the person against whom the report is made, hereinafter referred to as the ''respondent''.

(3) A clear and concise statement of the facts constituting the alleged breach or violation of any of the provisions of the Walsh-Healey Public Contracts Act, or of any of the rules or regulations prescribed thereunder.

(41 U.S.C. 35, 40; 5 U.S.C. 556)

[32 FR 7702, May 26, 1967, as amended at 36 FR 288, Jan. 8, 1971; 61 FR 19987, May 3, 1996]

§50–203.2 Issuance of a formal complaint.

After a report of a breach or violation has been filed, or upon his own motion and without any report of a breach or violation having been previously filed, the Solicitor may issue and cause to be served upon the respondent a formal complaint stating the charges. Notice of hearing before an administrative law judge designated by the Secretary of Labor shall be issued and served within a reasonable time after the issuance of the complaint. A copy of the complaint and notice of hearing shall be served upon the surety or sureties. Unless the administrative law judge otherwise determines, the date of hearing shall not be sooner than 30 days after the date of issuance of the complaint.

[35 FR 14839, Sept. 24, 1970, as amended at 61 FR 19987, May 3, 1996]

§50–203.3 Answer.

(a) The respondent shall have the right, unless otherwise specified in the complaint and notice, within twenty (20) days after date of issuance of the formal complaint, to file an answer thereto. Such answer shall not be limited to a mere denial of the charges. It shall specifically deny or admit each of the charges, and, if the answer is in denial of any one of the charges, it shall contain a concise statement of the facts relied upon in support of the denial. Any charges not specifically denied in the answer shall be deemed to be admitted and may be so found by the administrative law judge, unless the respondent disclaims knowledge upon which to make a denial. If the answer should admit any charge but the respondent believes there are reasons or circumstances warranting special consideration, such reasons and circumstances should be fully but concisely stated.

(b) Such answer shall be in writing, and signed by the respondent or his attorney or by any other duly authorized agent with power of attorney affixed.

(c) If no answer is filed, or if the answer as filed does not warrant a postponement of the hearing, such hearing will be held as scheduled.

(d) The original and two copies of the answer shall be filed with the Chief administrative law judge, Department of Labor, Washington, D.C.

(e) In any case where formal complaints have been amended, the respondent shall have the right to amend his answer within such time as may be fixed by the administrative law judge.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 61 FR 19987, May 3, 1996]

§ 50–203.4 Motions.

(a) All motions except those made at the hearing shall be filed in writing with the Chief administrative law judge, Department of Labor, Washington, D.C., and shall be included in the record. Such motions shall state briefly the order or relief applied for and the grounds for such motion. The moving party shall file an original and two copies of all such motions. All motions made at the hearing shall be stated orally and included in the stenographic report of the hearing.

(b) The administrative law judge designated to conduct the hearing may in his discretion reserve his ruling upon any question or motion.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 61 FR 19987, May 3, 1996]

§ 50–203.5 Intervention.

Any employer, employee, labor or trade organization or other interested person or organization desiring to intervene in any pending proceeding prior to, or at the time it is called for hearing, but not after a hearing, except for good cause shown, shall file a petition in writing for leave to intervene, which shall be served on all parties to the proceeding, with the Chief administrative law judge, Department of Labor, or with the administrative law judge designated to conduct the hearing, setting forth the position and interest of the petitioner and the grounds of the proposed intervention. The Chief administrative law judge, or the administrative law judge, as the case may be, may grant leave to intervene to such extent and upon such terms as he shall deem just.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 61 FR 19987, May 3, 1996]

§ 50–203.6 Witnesses and subpoenas.

(a) Witnesses shall be examined orally under oath except that for good and exceptional cause the administrative law judge may permit their testimony to be taken by deposition under oath.

(b) The administrative law judge shall upon application by any party, and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence under oath, including books, records, correspondence, or documents. Applications for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought.

(c) Witnesses summoned before the administrative law judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear, and the person taking the depositions shall be paid by the party at whose instance the depositions are taken.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, and amended at 36 FR 289, Jan. 8, 1971; 61 FR 19987, May 3, 1996]

§ 50–203.7 Prehearing conferences.

(a) At any time prior to the hearing the administrative law judge may, on motion of the parties or on his own motion, whenever it appears that the public interest will be served thereby, direct the parties to appear before him for a conference at a designated time and place to consider, among other things:

(1) Simplification of the issues;

(2) The necessity or desirability of amending the pleadings for purposes of clarification, amplification or limitation;

(3) Obtaining stipulations of fact or admissions of undisputed facts or the authenticity of documents;

(4) The procedure at the hearing;

(5) Limiting the number of witnesses;

(6) The propriety of mutual exchange among parties of prepared testimony or exhibits; or

(7) Any other matters which would tend to expedite the disposition of the proceeding.

(b) The action taken at the conference may be recorded, in summary form or otherwise, for use at the hearing. Such record, when agreed to by the parties and approved by the administrative law judge, shall be conclusive as to the action embodied therein. Stipulations and admissions of fact and amendments to pleadings shall be made a part of the record of the proceeding.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 61 FR 19987, May 3, 1996]

§50–203.8 Hearing.

(a) The hearing for the purpose of taking evidence upon a formal complaint shall be conducted by an administrative law judge. Administrative law judges shall, so far as practicable, be assigned to cases in rotation. In case of the death, illness, disqualification or unavailability of the administrative law judge presiding in any proceeding, another administrative law judge may be designated to take his place. Such hearings shall be open to the public unless otherwise ordered by the administrative law judge.

(b) The administrative law judges shall perform no duties inconsistent with their duties and responsibilities as administrative law judges. Save to the extent required for the disposition of ex parte matters as authorized by law, no administrative law judge shall consult any person or party as to any fact in issue unless upon notice and opportunity for all parties to participate.

(c) Administrative law judges shall act independently in the performance of their functions as administrative law judge and shall not be responsible to, or subject to the supervision or direction of, any officer, employee or agent engaged in the performance of investigative or prosecuting functions for the Department of Labor in the enforcement of the Public Contracts Act.

(d) At all hearings it shall be the right of counsel for the Government to open and close, subject to the right of the administrative law judge to designate, upon cause shown, who shall open and close.

(e) It shall be the duty of the administrative law judge to inquire fully into the facts as to whether the respondent has breached or violated any of the provisions of the Walsh-Healey Public Contracts Act of June 30, 1936 (49 Stat. 2036, as amended; 41 U.S.C. 35–45), or any rules or regulations prescribed thereunder, as set forth in the formal complaint. Counsel for the Government, and the administrative law judge, shall have the power to call, examine, and cross-examine witnesses and to introduce into the record documentary or other evidence.

(f) Any party to the proceeding shall have the right to appear at such hearing in person, by counsel, or otherwise, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other evidence.

(g) In any such proceedings, the rules of evidence prevailing in courts of law or equity shall not be controlling. However, it shall be the policy to exclude irrelevant, immaterial, or unduly repetitious evidence.

(h) In any such proceedings, in the discretion of the administrative law judge, stipulations of fact may be made with respect to any issue.

(i) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, shall be stated orally, together with a short statement of the grounds for such objection, and included in the stenographic report of the hearing. No such objection shall be deemed waived by further participation in the proceeding.

(j) Unless the administrative law judge otherwise directs, any party to the proceeding shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing unless the administrative law judge directs.

(k) In the discretion of the administrative law judge, the hearing may be

continued from day to day, or adjourned to a later date, or to a different place, by announcement thereof at the hearing by the administrative law judge, or by other appropriate notice.

(l) Contemptuous conduct at any hearing before an administrative law judge shall be ground for exclusion from the hearing. The failure or refusal of a witness to appear at any such hearing or to answer any question which has been ruled to be proper shall be ground for the action provided in section 5 of the Walsh-Healey Public Contracts Act of June 30, 1936 (sec. 5, 49 Stat. 2039; 41 U.S.C. 39), and in the discretion of the administrative law judge may be ground for the striking out of all testimony which may have been previously given by such witness on related matters.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, and amended at 36 FR 289, Jan. 8, 1971; 61 FR 19987, May 3, 1996; 61 FR 32910, June 25, 1996]

§ 50–203.9 Briefs.

(a) Any interested person or organization shall be entitled to file with the administrative law judge, Department of Labor, Washington, D.C., briefs, proposed findings of fact or conclusions of law, or other written statements, within the time allowed by the administrative law judge.

(b) Any brief or written statement shall be stated in concise terms.

(c) Three copies of all such documents shall be filed.

(d) Briefs or written statements of more than twenty pages shall be properly indexed.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 61 FR 19987, May 3, 1996]

§ 50–203.10 Decision of the administrative law judge.

(a) Following the hearing and upon completion of the record, the administrative law judge shall issue an order and decision embodying his findings of fact and conclusions of law on all issues as to whether respondent has violated the representations and stipulations of the act and the amount of damages due therefor, which shall become final, unless a petition for review is filed under § 50–203.11, before the expiration of the time provided for the filing of such petition. The decision of the administrative law judge shall be inoperative unless and until it becomes final. If the respondent is found to have violated the act, the administrative law judge in his decision shall make recommendations to the Administrative Review Board as to whether respondent should be relieved from the application of the ineligible list provisions of section 3 of the Walsh-Healey Public Contracts Act of June 30, 1936 (sec. 3, 49 Stat. 2037; 41 U.S.C. 37).

(b) The decision of the administrative law judge shall be made part of the record, and a copy thereof shall be served upon the respondent or respondents by mailing a copy thereof by registered mail to the respondent or respondents or to the attorney or attorneys of record. Upon request from employees or other interested persons, the decision will be served upon such persons, and in the discretion of the administrative law judge, the decision will be served upon such other persons or their attorneys who appeared at the hearing or upon brief by mailing a copy thereof to such persons.

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, as amended at 61 FR 19987, May 3, 1996]

§ 50–203.11 Review.

(a) Within twenty (20) days after service of the decision of the administrative law judge any interested party to the proceeding may file with the Chief administrative law judge an original and four copies of a petition for review of the decision. The petition shall set out separately and particularly each error assigned. The request for review and the record will then be certified to the Administrative Review Board.

(b) The petitioner may file a brief (original and four copies) in support of his petition within the period allowed for the filing of the petition. Any interested person upon whom the decision has been served may file within ten (10) days after the expiration of the period within which the petition is required to be filed a brief in support of or in opposition to the administrative law judge's decision.

(c) The petition and the briefs filed under this section shall make specific reference to the pages of the transcript or of the exhibits which are relevant to the errors asserted with respect to findings of fact, and objections to such findings which are not so supported will not be considered.

(d) No matter properly subject to objection before the administrative law judge will be considered by the Administrative Review Board unless it shall have been raised before the administrative law judge or unless there were reasonable grounds for failure so to do; nor will any matter be considered by the Administrative Review Board unless included in the assignment or errors. In the discretion of the Administrative Review Board, review may be denied if the petition and brief in support thereof fail to show adequate cause for such review.

(e) The order denying review, or the decision of the Administrative Review Board, whichever is entered, will be made a part of the record, and a copy of such order or decision will be served upon the parties who were served with a copy of the administrative law judge's decision.

(f) If the respondent is found to have violated the Act, the Administrative Review Board shall determine whether respondent shall be relieved from the application of the ineligible list provisions of section 3 of the Walsh-Healey Public Contracts Act (sec. 4, 49 Stat. 2039; 41 U.S.C. 37).

[11 FR 14493, Dec. 18, 1946. Redesignated at 24 FR 10952, Dec. 30, 1959, and amended at 36 FR 289, Jan. 8, 1971; 61 FR 19987, May 3, 1996]

§ 50–203.12 Effective date.

The amendments to Subpart A shall become effective upon publication in the FEDERAL REGISTER May 3, 1996; Provided, however, That in any case where a hearing has begun or has been completed prior to said publication, the proceeding shall be conducted pursuant to the rules of practice in effect at the time the proceeding was initiated unless the parties stipulate in writing or orally for the record that the proceeding be conducted in accordance with §§ 50–203.1 to 50–203.12.

[61 FR 19988, May 3, 1996]

Subpart B—Exceptions and Exemptions Pursuant to Section 6 of the Walsh-Healey Public Contracts Act

§ 50–203.13 Requests for exceptions and exemptions.

(a) Request for the exception or exemption of a contract or class of contracts from the inclusion or application of one or more of those stipulations required by § 50–201.1 of this chapter must be made by the head of a contracting agency or department and shall be accompanied with a finding by him setting forth reasons why such inclusion or application will seriously impair the conduct of Government business.

(b) Request for the exception or exemption of a stipulation respecting minimum rates of pay and maximum hours of labor contained in an existing contract must be made jointly by the head of a contracting agency and the contractor and shall be accompanied with a joint finding by them setting forth reasons why such exception or exemption is desired.

(c) All requests for exceptions or exemptions which relate solely to safety and health standards shall be transmitted directly to the Bureau of Labor Standards, WSA, Department of Labor. All other requests for exceptions or exemptions shall be transmitted to the Office of Government Contracts Wage Standards, WSA, of the Department of Labor.

[12 FR 446, Jan. 22, 1947. Redesignated at 24 FR 10952, Dec. 30, 1959, and amended at 36 FR 289, Jan. 8, 1971]

§ 50–203.14 Decisions concerning exceptions and exemptions.

Decisions concerning exceptions and exemptions shall be in writing and approved by the Secretary of Labor or officer prescribed by him, originals being filed in the Department of Labor, and certified copies shall be transferred to the department or agency originating the request and to the Comptroller General. All such decisions shall be